85-818 (1)

NO:

Supreme Court, U.S.
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CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1985

MANNIE BLACK and MOSES WILLIAMS,
Petitioners,

vs.

FREEMAN T. WYCHE,
Respondent.

On Writ of Certiorari to the District Court of Appeal of Florida for the Third District

PETITION FOR WRIT OF CERTIORARI

LISA BENNETT
Counsel for Petitioners
304 Palermo Avenue
Coral Gables,
Florida, 33134
(305) 444-5925

94pp

No._____

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SUPREME COURT OF THE UNITED STATES
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

MANNIE BLACK and MOSES WILLIAMS,
Petitioners,

vs.

FREEMAN T. WYCHE,
Respondent.

A. QUESTION PRESENTED FOR REVIEW

Whether the First and Fourteenth Amendments to the United States Constitution prohibit a state court from rejecting decisions of the highest governing body of a church on questions of church doctrine, law, and the control of church property, by requiring and upholding an election to resolve the dispute by majority rule, where the church, though governed within the

congregation, is part of a body of churches which subscribe to a form of church government which vests authority in certain church officers and prohibits the resolution of disputes by voting.

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D. OPINIONS BELOW

The final opinion of the District Court of Appeal of Florida for the Third District, the order herein sought to be reviewed, is reported as Black v. Wyche, 472 So.2d 1195 (Fla. 3rd DCA 1985). (App. 17-18).1/ The opinion of the District Court of Appeal, Third District, entered in a prior appeal from a non-final order entered in this case is reported as Black v. Wyche, 440 So.2d 364 (Fla. 3rd DCA 1983). (App.10-11).

The opinion of this Court denying jurisdiction to review the order of the District Court affirming the non-final order referred to above is reported as Williams v. Wyche, 104 S.Ct. 2145 (1984). (App.12).

1/ Reference to the Appendix to the Petition for Certiorari is by the abbreviation "App." followed by the page number.

E. STATEMENT ON JURISDICTION

The judgment sought to be reviewed is an opinion of the District Court of Appeal of Florida for the Third District which was rendered June 11, 1985. (App.17-18). No motion for rehearing was filed. On September 9, 1985, petitioners filed an application for extension of time within which to petition for certiorari. The application was granted by an order of this Court extending the time to file the petition to and including November 11, 1985. (App.13).

The decision of the District Court was without written opinion. Pursuant to Florida law such decisions are not subject to review by the Supreme Court of Florida. Article V, Section 3(b)(3), Florida Constitution; Rule 9.030(a)(2)(A), Florida Rules of Appellate Procedure. The District Court

is, therefore, the state court of last resort in the instant case. This Court has jurisdiction, pursuant to Title 28 U.S.C. Section 1257(3), to review the opinion entered by the District Court, in that said opinion violates certain titles, rights, privileges or immunities guaranteed to the petitioners under the Constitution of the United States.

The opinion of the District Court infringes on the rights and privileges guaranteed to the petitioners by the First and Fourteenth Amendments to the United States Constitution, in that said opinion violates the constitutional bar against the establishment of religion and the guarantee of the free excercise of religion. The opinion of the District Court resolved a dispute over the control of church property and leadership of a congregation in contravention of decisions

of the highest body of church

govenrment .

F. CONSTITUTIONAL PROVISIONS

The case at bar involves the

following constitutional provisions:

" Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof;..." Amendement I, United States Constitution.

"... nor shall any State deprive any person of like, liberty, or property, without due process of law;...". Amendment XIV, Section 1, United States Constitution.

G. STATEMENT OF THE CASE

The case arose on filing of the petitioners' verified complaint seeking injunctive relief, a declaratory judgment and damages. (App.19-39). The complaint contained the following allegations:

Petitioners were elders of the Liberty City Church of Christ and had held that position for thirty years. As elders they had authority, according to tenet of the Church to appoint a minister. The petitioners appointed the respondent as minister upon an oral agreement. After determining that the respondent was not performing his duties satisfactorily, the petitioners terminated the respondent's employment as minister in accordance with the oral contract. (App.19-39).

At a meeting of church members, the respondent then called for a

vote, contrary to the prohibition against voting in the Church, which expelled the petitioners as elders of the Church and established himself as minister. The respondent then changed the locks on the Church buildings and proceeded to exercise custody and control over various real and personal properties belonging to the Liberty City Church of Christ. (App.19-39).

The petitioners, as elders of the Church, had the authority to exercise control over Church property and handle the finances of the Church. (App. 19-39). The respondent counterclaimed seeking certain Church funds in the custody of the petitioners.

A hearing was held on the parties cross motions for injunctive relief. No sworn testimony was taken at the hearing.

Despite the argument of petitioners' counsel that voting was prohibited in the Church, the trial court ordered an election to determine who was to hold the positions of minister and elders. The court also ordered Church funds in the control of the petitioners to be turned over to the respondent. (App. 6-9).

The non-final order of the trial court was appealed to the District Court. The District Court affirmed the trial court's order without opinion. (App.10-11).

The petitioners then sought review in this Court on the grounds that the District Court's order, affirming the trial court, violated the petitioners' First Amendment rights to religious freedom. This federal question, however, was not raised before the District Court. This Court denied jurisdiction. (App.12).

The court ordered election was held and the respondent was elected as minister and the petitioners were ousted as elders of the Church.

The respondent moved for summary judgment. In opposition to the motion for summary judgment the petioners filed several affidavits attesting to the prohibition against voting in the Church of Christ and to the fact that the elders are the highest ecclesiastical authority in the Church of Christ. (App.40-54). The petitioners also filed a copy of the deed to the Church land which was given to the petitioners in trust for the Church of Christ. (App.55-56).

The petitioners, in their cross motion for summary judgment and memorandum of law in opposition to the respondent's motion for summary judgment raised the federal question now asserted

before this Court. (App.57-60).

A hearing was held on the motion for summary judgment. No testimony was taken at the hearing. At the hearing, counsel for the petitioners argued that the court had no authority to order an election to select the minister where voting was prohibited in the Church and where the elders of the Church were the highest ecclesiastical authority and they had removed the minister. (App.1-5).

Counsel for the respondent argued that the issue had already been determined, by the District Court and this Court, adversly to the petitioners. (App.1-5). The trial court agreed with the respondent yet considered the issue and specifically stated that the court would again rule on the issue. (App.1-5).

In fact, the federal question was not raised before the District Court in the first appeal. Only isues of state law were raised in that appeal. The petitioners did raise the federal question before this Court in their styled "appeal" from the District Court's order. This Court, however, lacked jurisdiction to consider the question as it had not been raised in the lower court.

The federal question asserted in this petition was clearly raised in the trial court, where it was considered by the trial judge at the motion for summary judgment. (App.1-5). The federal question was also clearly raised in, and considered by, the District Court. (App.61-62).

The trial court entered final summary judgment for the respondent.

(App.14-16). The petitioners appealed to the District Court which affrimed without opinion. (App.17-18). It is this order for which the petitioners seek review.

H. REASONS FOR GRANTING WRIT OF CERTIORARI

Since Watson v. Jones, 80 U.S. 679, 13 Wall. 679, 20 L.Ed. 666 (1872), this Court has recognized the principle that the role of the civil courts in resolving property disputes involving internal ecclesiastical dissension is severely circumscribed. Watson v. Jones, supra, was decided before the First Amendment was made applicable to the States, but it has been recognized as reflecting the values of the First Amendment religion clauses and its principles have been strengthened by subsequent decisions of this Court.

The principle which holds that the First Amendment religion clauses, and

their application to the States through the Fourteenth Amendment, require civil courts to accept decisions of the highest orgaization of hierarchial polity on matters of discipline, faith, internal organization or ecclesiastical custom or law has been recognized by this Court since Watson v. Jones, supra, in the following cases: Gonzalez v. Roman Catholic Archbishop of Manila, 280 U.S. 1, 50 S.Ct. 5, 74 L.Ed. 131 (1920); Kedroff v. St. Nicholas Cathedral of Russian O. Ch., 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952); Kreshik v. Saint Nicholas Cathedral, 363 U.S. 190, 80 S.Ct. 1037, 4 L.Ed. 2d 1140 (1960); Presbyterian Ch. v. Mary E. B. Hull Mem. Pres. Church, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969); Serbian Eastern orthodox Diocese, Etc. v. Milivojevich, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976); and

Jones v. Wolf, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979).

Hierarchical churches have been defined by this Court as:

> "... those organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head". Kedroff, supra, at 73 S.Ct 151.

The Church in the instant case is organized as a body with other churches having similar faith and doctrine, i.e., the Church of Christ. The ecclesiastical head of the Church is the body of elders for each congregation. (App.40-54). The lack of one ecclesiastical head for all the Churches of Christ, however, does not dictate the denial of relief to the petitioners in this case. On the contrary, the unique facts of this case indicate that the petitioners are just as entitled to the protections of the First Amendment religion clauses as if their

Church were organized along the classic lines of hierarchical orgainization.

The evidence in the lower courts was undisputed that in the Church of Christ the elders are selected by Biblical guidlines, that they are the highest authority in each church and that their right to hold office or their decisions are not subject to question by popular vote of the congregation. (App.40-54).

While counsel for the respondent "argued" that the congregation was a democracy, no evidence to that effect was ever presented to the court. No testimony was taken at the hearings before the trial court and no depositions were filed with the court. The only evidence on the issue of the elders authority and whether voting was allowed or prohibited was the petitioners' sworn

complaint stating that an election was illegal (App.24), and the sworn affidavits of ministers of various Churchs of Christ stating that the elders were the highest church authority and that voting was prohibited in the Church of Christ. (App.40-54).

In Jones v. Wolf, supra, this Court held that, subject to the First Amendment requirements that courts differ to the resolution of issues of religious doctrine or polity to the highest ecclesiastical courts and refrain from resolving disputes on the basis of religious doctrine, the States may adopt neutral principles of law in resolving church property disputes. This Court further held that a presumptive rule of majority representation may be adopted. Florida has no such rule.

In Mills v. Baldwin, 363 So.2d 2 (Fla. 1978), the Florida Supreme Court held that where a majority of the congregation of a local church withdrew from a national religious organization, the ownership of the church property did not transfer to the majority faction, but remained to the minority of the congregation remaining loyal to the national orgaization. This Court in Mills v. Baldwin, 443 U.S. 914, 99 S.Ct. 3105, 61 L.Ed2d 878 (1979), granted certiorari, vacated the judgment and remanded the case to be considered in light of this Court's decision in Jones v. Wolf, supra. On remand, the Florida Supreme Court found its decision not to be inconsistent with Jones vs. Wolf, and reinstated its prior opinion. Mills v. Baldwin, 377 So.2d 971 (Fla. 1979). This Court denied certiorari in Mills v.

Baldwin, 446 U.S. 983, 100 S.Ct. 2964, 64 L.Ed.2d 839. The Florida Supreme Court declined to accept the invitation to adopt a presumptive rule of majority representation extended by Jones v. Wolf.

Clearly, if the Liberty City Church of Christ were subject to a board of elders who governed all of the Churches of Christ in the United States rather than elders for each single church, the above authorites would dictate a result contrary to that reached by the District Court. It is submitted that resolution of the dispute in the instant case should be governed by the same principles.

Resolution of a dispute over chuch property among members of an independent congregation is not appropriately resolved by the will of the majority where, as here, the evidence is uncontroverted that the highest

authority to determine such matters is vested in a body of elders whose decisions are not subject to question by popular vote, and that deciding such matters by voting is prohibited by chuch government. Support for this position is found in the following language of Watson v. Jones, supra:

"The second class of cases which we have described has reference to the case of a church of a strictly congregational or independent organization, governed solely within itself, either by a majority of its members or by such other local organism as it may have instituted for the purpose of ecclesiastical government; and to property held by such a church, either by way of purchase or donation, with no other specific trust attached to it in the hands of the church than that it is for the use of tha congregation as a religious society.

In such cases where there is a schism which leads to a separation into distinct and conflicting bodies, the rights of such bodies to the use of the property must be determined by the ordinary principles which govern voluntary associations. If the principle of government in such cases is that the majority rules, then the numerical majority of members must control the right to the use of the

property. If there be within the congregation officers in whom are vested the powers of such control, then those who adhere to the aknowledged organism by which the body is governed are entitled to use the property". Watson, supra, at 80 U.S. 724-726, (emphasis supplied).

The Church in the instant case is not the purely independent body spoken of in Watson, supra, above, as it belongs to the body of churches known as the Church of Christ which adhere to the form of church government heretofore described. Even if, however, the Church in question were a totally independent body, the above language in Watson, is support for the position that those persons who recognize the established government of the congregation should be entitled to the use of the property belonging to that conregation.

Additionaly, it should be noted that the church land was given to the petitioners, in trust, for the Church of

Christ. (App.55-56). The rejection of the form of government which the evidence establishes as the only one recognized by the Church of Christ is a sufficiently significant departure from the dedicated use to amount to a violation of that trust. SAee also Watson, supra, 80 U.S. 723-724.

I. CONCLUSION

For the reasons and upon the authorities cited above, the Petition for Certiorari should be granted.

Respectfully submitted,

LISA BENNETT
Counsel for Petitioners
304 Palermo Avenue
Coral Gables,
Florida, 33134
(305) 444-5925

BY:
LISA BENNETT
Counsel for Petitioners

J. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true and correct copies of the foregoing Petition for Writ of Certiorari have been served upon MARK A. VALENTINE, ESQUIRE, 3050 Biscayne Boulevard, Suite 800, Miami, Fl 33137, by depositing in a United States Post Office, Coral Gables, Florida, Branch, with first class postage prepaid, this 11th day of November, 1985.

LISA BENNETT
Counsel for Petitioners

K. APPENDIX

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IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

CASE NUMBER: 83-11427(12)

MANNIE BLACK, et al.
Plaintiffs/
Counter/Defendants,

vs.

FREEMAN T. WYCHE,
Defendant,
Counter/Plaintiff.
_____/

The above-entitled cause came on for hearing before Judge Moie J.L. Tendrich, at the Dade County Courthouse, 73 West Flagler Street, Miami, Dade County, Florida, on November 21, 1984, commencing at or about 1:05 o'clock p.m., pursuant to Notice.

....

THEREUPON, THE FOLLOWING PROCEEDINGS WERE HAD:

THE COURT: We are here on summary judgment. Whose motion is this?

Mr. VALENTINE: The Defendant's motion.

THE COURT: Go right ahead.

....

THE COURT: I am anxious to see the briefs that were filed in the Supreme Court and the District Court... From that, I can probably tell you what issues have been adversely decided.

MR. QUINTERO: I think I have mine.

THE COURT: What was the position of the appellant in the District Court. Did you take the position that a Civil Court had no jurisdiction in this matter?

MR. QUINTERO: Let me check, Your Honor.

THE COURT: If that issue was raised adversely to you, I am probably going to grant a summary judfment.

MR. VALENTINE: That's what they argued at the Supreme Court level.

MR. QUINTERO: The only issue that was taken up on appeal was whether the Trial Court abused its discretion in

denying Plaintiffs' request for injunctive relief in the Trial Court's ruling. The fact that the Trial Court's ruling at that time-- It was our position at that time that it was clearly against the weight of the evidence. That was the only issue taken up on appeal.

THE COURT: What did you tell the Supreme Court of the United States? Did you go to the Supreme Court of Florida?

MR. QUINTERO: No. I think it was a per curiam opinion.

THE COURT: What was the question?

MR. QUINTERO: In the Supreme Court, Your Honor, very simply, the issue was the First and Fourteenth Amendments to the United States Constitution, prohibiting the State Court from overriding the decision of the governing board of a non-independent Church and the selection of a Minister, requiring the

religious institution to hold an election of the congregation in order to determine the leadership and the control of the institution and to the Church property.

THE COURT: In view of that, I am going to now enter a summary judgment. I think the issues involved were dicided by the District Court and the Supreme Court of the United States, and I think the law of the case has been established. Give me a summary judgment.

....

MR. QUINTERO: All the Supreme Court did was deny cert on that issue.

THE COURT: I know, sir, but that is the very issue that could have been raised in front of the District Court. It was very simple.

MR. QUINTERO: But they didn't pass on that....

THE COURT: I am going to enter a

summary judgment. I think I have already decided it and I think the only thing left to do is dismiss it. If you want to undertake to prepare an order or if you want to take it up, I will allow you to prepare the order and go over it with counsel. If you want certain findings, I will be glad to do it. ...

....

THE COURT: That now if you want, and as I say I have no objection, you will get an appealable order. Go back out to the District Court or the Supreme Court of Florida or the United States Supreme Court, wherever it is going to go-- **I am specifically again ruling--** I have already ruled one time and I think that I have to be consistent. Now I don't know how you want to draw the order, but I am going to enter a summary final judgment. I don't think hearing testimony is going to do it. ...

IN THE CIRGUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

CASE NUMBER: 83-11427(12)

MANNIE BLACK, et al.
Plaintiffs/
Counter/Defendants,

vs.

FREEMAN T. WYCHE,
Defendant,
Counter/Plaintiff.
_____/

ORDER

THIS CAUSE having come before this Court on a Verfied Complaint for Injunctive Relief, Declaratory Judgment and Damages by the Plaintiffs/ Counter-Defendant and on a Sworn Counter-Claim for Injunction and Other Relief by Defendant/Counter-Plaintiff, MINISTER FREEMAN T. WYCHE, on behalf of the LIBERTY CITY CHURCH OF CHRIST, the Court haveing heard argument of Counsel and being otherwise fully advised,

IT IS ORDERED AND ADJUDGED

(1) The Plaintiffs'/ Counter-Defendant's and Defendant's/ Counter-Plaintiff's request for injunctive relief is hereby DENIED.

(2) That the Plaintiffs/Counter-Defendant are directed to return all funds withdrawn from the LIBERTY CITY CHURCH OF CHRIST checking account and money-market account at COMMERCIAL BANK AND TRUST COMPANY to MINISTER FREEMAN T. WYCHE, on behalf of the LIBERTY CITY CHURCH OF CHRIST. MINISTER WYCHE is hereby directed to deposit said funds into the CHURCH'S account at CAPITAL BANK and to maintain an accounting of the same. The action herein should take place immediately. The CHURCH is further directed to expend said funds for those purposes and activities directly attributable to its operation.

Attorney's fees and legal expenses are not to be paid out of said funds until further ordered by this Court.

(3) It is further ordered that the CHURCH schedule a meeting of eligible members of the LIBERTY CITY CHURCH OF CHRIST. Said meeting shall include, but not be limited to, the following issues:

(a) Which individual(s) shall continue to serve as elders of the CHURCH.

(b) Which individual(s) shall serve as minister of the CHURCH.

That said meeting shall be noticed by mail or posted notice. Said notice should include, but not be limited to, time, date, location and purpose of meeting. The minutes of said meeting shall be recorded by a legal stenographer (i.e. Court Reporter).

(4) Supersedeas bonds are hereby

DENIED.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida this 6th day of April, 1983.

/s/MOIE J.L. TENDRICH
CIRCUIT COURT JUDGE

Copies furnished to:

Commercial Bank and Trust Co.
Ellis Rubin, Esq.
R.V. Walker
Mark A. Valentine, Esq.

NOT FINAL UNTIL TIME
EXPIRES TO FILE REHEARING
MOTIONS AND, IF FILED,
DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, A. D. 1983

CASE NO.: 83-926

MANNIE BLACK and
MOSES WILLIAMS,

Appellants,

vs.

BROTHER FREEMAN T. WYCHE,

Appellee.

Opinion filed October 11, 1983.

An Appeal from a non-final order from the Circuit Court for Dade County,

Moie J. Tendrich, Judge.

Ellis Rubin and Laurie Bernstein, for appellants.

McCrary, Valentine & Handfield, and Mark Valentine, for appellee.

Before SCHWARTZ, C. J. and HENDRY and FERGUSON, JJ.

PER CURIAM.

Affirmed.

SUPREME COURT OF THE UNITED STATES

NO. 83-1434

MOSES WILLIAMS and MANNIE BLACK,

vs.

FREEMAN T. WYCHE

The appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari is denied.

April 23, 1984

SUPREME COURT OF THE UNITED STATES

NO. A-203

MANNIE BLACK AND MOSES WILLIAMS,
Applicants,

vs.

FREEMAN T. WYCHE

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing a petition for writ of certioratri in the above-entitled cause be, and the same is hereby, extended to and including November 11, 1985.

/s/ Lewis F. Powell, Jr.
Associate Justice of the
Supreme Court of the United
States

Dated this 16th

day of September, 1985.

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

CASE NUMBER: 83-11427(12)

MANNIE BLACK, et al.
Plaintiffs/
Counter/Defendants,

vs.

FREEMAN T. WYCHE,
Defendant,
Counter/Plaintiff.
_____/

SUMMARY FINAL JUDGMENT

THIS CAUSE having come before this Court on the Defendant's/Counter Plaintiff's Motion for Summary Judgment and Amendment to Motion for Summary Judgment, Plaintiffs/Counter Defendants Motion and Memorandum of Law Regarding Motion for Summary Judgment, the court having heard argument of respective counsel, and reviewed the Motions of the respective parties and the court being otherwise fully advised, it is

ORDERED and ADJUDGED as follows:

(1) That following the Court's injunction Hearing on April 5, 1983, the Court ordered that the LIBERTY CITY CHURCH OF CHRIST membership conduct a meeting to determine the continued status of MINISTER WYCHE as Minister and the status of BLACK and WILLIAMS as Elders.

(2) The "Court Ordered Meeting" was held on or about March 28, 1983 and MINISTER WYCHE'S position as Minister was confirmed by a majority vote, while BLACK and WILLIAMS were dismissed as Elders by a majority vote.

(3) That MINISTER FREEMAN T. WYCHE is the Minister of the LIBERTY CITY CHURCH OF CHRIST.

(4) That MANNIE BLACK and MOSES WILLIAMS are no longer Elders of the LIBERTY CITY CHURCH OF CHRIST.

(5) That MINISTER FREEMAN T. WYCHE and family are in legal possession of the church owned property currently in their possession and in their possession at the time of action herein was commenced to wit: real property at 1263 N.W. 67th Street, Miami, Florida and 2406 N.W. 67th Street, Miami, Florida.

(6) That the Verified Complaint for Injunctive Relief, Declaratory Judgment and Damages filed by the Plaintiff's MOSES WILLIAMS and MANNIE BLACK is hereby dismissed with prejudice.

DONE and ORDERED in Chambers in Miami, Dade County, Florida this 28 day of November, 1984.

/s/MOIE J.L. TENDRICH
CIRCUIT COURT JUDGE

Copies furnished to:

Mark A. Valentine, Esq.
Ellis Rubin, Esq.

NOT FINAL UNTIL TIME
EXPIRES TO FILE REHEARING
MOTIONS AND, IF FILED,
DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JANUARY TERM, 1985

MANNIE BLACK and
MOSES WILLIAMS,

Appellants,

vs.

MINISTER FREEMAN T. WYCHE,

Appellee.

Opinion filed June 11, 1985.

An Appeal from the Circuit Court for Dade County, Moie J.L. Tendrich, Judge.

Ellis Rubin and Laurie Bernstein, for appellants.

McCrary & Valentine and Mark A. Valentine, for appellee.

Before SCHWARTZ, C.J., and BASKIN and DANIEL S. PEARSON, JJ.

PER CURIAM.

Affirmed.

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

MOSES WILLIAMS and MANNIE BLACK,

Plaintiffs,

vs.

BROTHER FREEMAN T. WYCHE,

Defendant.

VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT AND DAMAGES

COMES NOW, the Plaintiffs, MOSES WILLIAMS and MANNIE BLACK, by and through their undersigned attorney and sue the Defendant, BROTHER FREEMAN T. WYCHE and for cause say as follows:

COUNT I

1. That this is an action for injunctive relief.

2. That all times material herein, Plaintiffs, MOSES WILLIAMS and MANNIE BLACK were and are residents of Dade County, over the age of 18 years and sui juris.

3. That at all times material herein, Defendant BROTHER FREEMAN T. WYCHE was and is a resident of Dade County, over the age of 18 years and sui juris.

4. That the real property referred to herein is located at 1263 N. W. 67th Street, Miami, Florida and known as the Liberty City Church of Christ; 2406 N. W. 67th Street, Miami, Florida and a parcel of real property located at 17th Avenue and 83rd Street, Miami, Florida.

5. That all the acts and/or omissions complained of herein occurred within Dade County, Florida.

6. That at all times material herein, Plaintiffs, MOSES WILLIAMS and MANNIE BLACK were employed and held the position as elders of the aforesaid Liberty City Church of Christ, Inc., for the past 30 years and at all times material herein, acted within the course and scope of their employment as the elders.

7. That on or about 1979, Plaintiffs and Defendant orally agreed to designate Defendant as Minisster of the aforesaid Liberty City Church of Christ, Inc. That pursuant to the terms of this agreement Defendant was to abide by the Church's scriptures and tenets, and the authority of the elders.

8. That at all times material herein, and pursuant to this employment

arrangement, Defendant received $550.00 per week salary, Defendant's wife received $75.00 per week for secretarial duties. Defendant received living quarters adjacent to the church and utilitites within these premises, to be paid by the church.

9. Futher, the parties agreed that in the event Defendant failed to perform his duties satisfactorily, Defendant's employment would be terminated by the elders upon three months notice, with salary continuing throughout this 90-day period.

10. That Plaintiffs complied with all conditions precedent to be performed under the terms of the agreement.

11. That on or about March 6, 1983 and after lengthy deliberations, Plaintiffs presented Defendant with a letter requesting that Defendant's employment be terminated due to unsatisfactory performance of Defendant's duties, a copy of which is attached hereto as Exhibit A.

12. That Plaintiffs provided Defendant with the required 90-day termination notice.

13. That on or about March 7, 1983, contrary to the church's doctrine, Defendant organized a meeting calling for the dismissal of the church's elders.

14. That at the aforesaid meeting

of the church, pursuant to Defendant's initiation an "illegal" vote was held, contrary to the church's doctrine, at which the elders were expelled from retaining their position at the aforesaid church.

15. That shortly thereafter, Defendant established himself as Minister of the church, removed the eldership of the church, and changed the locks of the church door; thereby rendering the church impassable by the elders and members having keys.

16. That Defendant continues to reside on the church property.

17. Further, that Defendant's daughter continues to reside at the parsonage, this being church property located at 2406 N. W. 67th Street, Miami,

Florida.

18. That the aforesaid church is the sole owner of the real property in question and record title owner of same.

19. That Defendant has no proprietary interest in and to said real property.

20. That Plaintiffs have on divers occasions spoken with Defendant and requested that Defendant return the church's property including but not limited to church buildings, furnishings, valuable paintings located within the church, and Sunday morning collections, and Defendant has neglected, failed and/or refused to do so.

21. That Defendant has refused to relinquish his post and continues to act as the Minister in defiance of the orders

of the elders, this defiance being open and notorious.

22. That Plaintiffs as elders of the aforesaid church had the power and authority to handle the financial affairs of the aforesaid church and to sign on the church's account. That by and through this authority Plaintiffs transferred the church's account, pursuant to advice of counsel, and pending the court's decision regarding this matter.

23. That unless an injunction is granted by the court herein, enjoining Defendant from operating as a Minister of the Liberty City Church of Christ, said Defendant will irreparably injure and damage the spiritual and financial well-being of the Liberty City Church.

24. Further, that said injunction is necessary to prevent Defendant from secreting, hypothecating or disposing of said church's property.

25. That Plaintiffs have no other adequate remedy at law to restrain the actions of the Defendant and to protect their property except in this Court of equity.

26. Further that Defendant's actions have caused the dis-association and severance of members of the church,

which practices are against the concepts and tenets of the church.

WHEREFORE, Plaintiffs move this Honorable Court for an order as follows:

1. That this Court has jurisdiction over the subject matter and parties herein.

2. That this Court grant Plaintiffs injunctive relief against Defendant.

3. That this Court enjoin Defendant from continuing in his position as Minister of the Liberty City Church of Christ.

4. That this Court require and order Defendant to vacate the real property as aforesaid.

5. That this Court enjoin Defendant from secreting, hypothecating

and/or disposing of all church property both temporarily and permanently.

6. Such other and further relief as this Court deems just and appropriate under the circumstances.

COUNT II

27. That this is an action for declaratory judgment.

28. That Plaintiffs reaver and reallege each and every allegation set forth in Counts 1 through and inlcuding 26 of this complaint.

29. That at all times material herein the aforesaid Liberty City Church of Christ is the true and legal title owner of certain property located at 1263 N. W. 67th Street, Miami, Florida.

30. That Defendant took possession of said property and other property

belonging to the aforesaid church and refused to vacate the said property, and/or return the church's property.

31. That Plaintiffs as elders of the aforesaid church have brought this action fearing irreparable harm and injury to the aforesaid church and dis-association and severance among its members.

32. That Plaintiffs are in doubt as to the effect of and their rights and would ask this Honorable Court for a determination of these rights; the equities favor the Plaintiffs and are against the Defendant.

33. That Plaintiffs have no adequate remedy at law to restrian the action of Defendant and to protect their property except in this Court of equity.

WHEREFORE, Plaintiffs move this Honorable Court for an order as follows:

1. That this Court has subject matter jurisdiction over the parties.

2. That Court determines the rights, duties and status of Plaintiffs.

3. That this Court enjoin Defendant from continuing in his position as Minister of the Liberty City Church of Christ.

4. That this Court require and order Defendant to vacate the real property as aforesaid.

5. That this Court enjoin Defendant from secreting, hypothecating

and/or disposing of all church property.

6. That this Court determine the rights of Plaintiffs regarding control of the church's financial matters, and retention of the church's bank accounts.

7. Such other and further relief as this Court deems just and appropriate under the circumstances, and/or in the alternative,

COUNT III

34. That this is an action for conversion.

35. That this is an action in which damages exceed $5,000.

36. That Plaintiffs reaver and reallege each and every allegation contained in paragraphs 1 through and including 33 of this Complaint.

37. That at all times material herein, Plaintiffs were and are the elders of the Liberty City Church of Christ, and at all times material herein acted within the scope and capacity of their employment as the elders.

38. That according to the tenet of the aforesaid Church, Plaintiffs had the duty to appoint a Minister to preside over the aforesaid Church.

39. That Plaintiffs' duties included dismissing the Minister in the event he performed his duties unsatisfactorily.

40. That Defendant acting as Minister of the aforesaid Church failed to perform his duties satisfactorily and was thereby dismissed from his employment at the Church on or about early March of 1983.

41. That Defendant was requested to leave the adjacent living quarters which were provided to Defendant for his use only in his capacity as Minister.

42. That Defendant unlawfully, maliciously and wantonly changed the locks on the Church building, thereby converting to his own use the aforesaid Church building and residence.

43. That Defendant had unlawfully converted to his own use the contents of the Church building, the living quarters adjacent to the Church building, Sunday morning collection monies and other Church properties.

44. That Plaintiffs have protested the removal of the Church property, but Defendant has neglected, failed and/or refused to return said property to the

congregation.

45. That as a direct and proximate result of the wrongful acts of Defendant, Plaintiffs have been deprived of their position as elders of the Church; the Church's property including Church buildings, bank accounts, valuable paintings and Sunday morning collection moies have been retained by Defendant, the Church members have become dis-associated and, in addition, Defendant has prevented members from entering onto the Church premises due to a new lock.

WHEREFORE, Plaintiffs MANNIE BLACK and MOSES WILLIAMS, by and through their undersigned attorney sue the Defendant for damages in excess of $5,000, for costs interest and any and all other relief which this Court deems just and

appropriate and demands trial by Judge or

all issues triable by Judge.

ELLIS RUBIN LAW OFFICES, P. A.
Attorneys for Plaintiffs
265 N. E. 26th Terrace
Miami, Florida 33137
(305) 576-5600

BY: /s/ ELLIS S. RUBIN
Ellis S. Rubin, Esquire

/s/ Mannie Black
MANNIE BLACK

/s/ MOSES WILLIAMS
MOSES WILLIAMS

STATE OF FLORIDA)
)SS
COUNTY OF DADE)

BEFORE ME the undersigned authority, personally appeared, MANNIE BLACK and MOSES WILLIAMS who after being duly sworn deposes and states that the foregoing is true and correct.

/s/ Patricia R. Rand
NOTARY PUBLIC
State of Florida
March 31, 1983

My commission expires:

Notary Public State of Florida
at Large My Commission Expires
Apr. 19, 1984 Bonded thru General
Ins. Underwriters

Miami, Florida

February 27, 1983

Bro. Freeman T. Wyche
1295 N. W. 67th Street
Miami, Florida

Re: Freeman T. Wyche

Dear Bro. Wyche:

We the elders of the Liberty City Church of Christ, met on February twenty-third, (23rd) 1983. And at that time decided that your services as minister of this congregation would no longer be desired, and that, as of March 1st, 1983, you are hereby given three months notice, (until May 31st) to relocate your residency.

It was further agreed, that we will continue your present salary, as is, until May 31st 1983, and at that time, your ser-

vices here at the, Liberty City Church of Christ will be terminated.

Sincerely, the elders of L.C.C.C.

/s/ Moses Williams
Moses Williams

/s/ Mannie Black
Mannie Black

/s/ Henderson Beasley
Henderson Beasley

MW/MB/HB.

:paj

AFFIDAVIT

Re. case #83-114-27: in the matter of the Liberty City Church of Christ

1. Explanation of church government

Each church of Christ is governed by elders or bishops at the local congregational level (1 Timothy 3:1-7 and Titus 1:5-16). Deacons are the only other class of church officers (I Timothy 3:8-13). Ministers, teachers and all other members serve under the authority of the elders (1I Timothy 4:5).

Since the sacred scriptures do not grant scriptural authority to any persons other than elders, a church of Christ does not grant any authority to any other person or group of persons.

2. Authority of elders, ministers and other officers

Churches of Christ have no officers other than elders and deacons as

set forth in I Timothy 3 and Titus 1. Evangelists, preachers or ministers are not officers of the church, for they are not required to meet specific qualifications. They serve at the direction of the elders, who set the terms and conditions of employment, dates of initial and final dates of employment. Regardless of whatever input they may receive, it is up to the elders to decide what to do regarding the employment status of evangelists, preachers, ministers.

3. Church property

The elders, as God's authority in each local congregation, extend their authoritly into all matters, including church property. They sign for it at the time of purchase, sale or any other change of the legal status of the property.

4. Voting

Where elders oversee a given congregation, there is no occasion for voting. For to do so could set at naught the authority of the elders. Members usually voice their opinions at business meeetings called by the elders or approach the elders in private.

5. History, customs, doctrine

"All scripture is given by inspiration of God, and is profitable for doctrine, for reproof, for correction, for instruction in righteousness; that the man of God may be perfect, thoroughly furnished unto all good works." (II Timothy 3:16-17)

With the establishment of the church of Christ in 33 A.D. on the Day of Pentecost (Acts 2), all inspired scripture was being completed within that century. No new customs, creeds or

traditions have been made or recognized.

/s/ O. L. Lamar
Minister
Magnolia Park church of Chri
Opa Locka, Florida

/s/_____
Notary Public

I certify that this letter was signed in my presence by O.L. Lamar personally known to me.

Notary Public, State of Florida at Large

My Commission Expires March 9, 1985

Bonded thru Maynard Bonding Agency

AFFIDAVIT

In the matter of the Liberty City church of Christ: Case #83-114-27

1. Explanation of church government

Churches of Christ are governed by bishops or elders of each local congregation. (See I Timothy 3:1-7; Titus 1:5-16). Serving under the elders are the deacons and all other members. (1 Tim. 3:8-13). Deacons are usually appointed to specific church functions by the elders. (Acts 6:3). Others may be assigned to specific functions, including ministry/ evangelism.

We believe that where the scriptures are silent, we must be silent. Thus, because there is no mention of higher ecclesiastical authority, churches of Christ function without these. A few small congregations have functioned without elders for a time, but the desire

is always to have elders to oversee the flock. (Titus 1:5).

II. Authority of elders/ ministers/ deacons/ other officers

From a scriptural standpoint there are no officers of the church other than elders and deacons as cited in 1 Tim. 3 and Titus 1. Ministers are servants assigned to carry out functions at the discretion of the elders, who, if the minister/evangelist is a salaried employee, may employ and terminate, at their discretion. it is their judgment and only their final decision as to the conditions of the evangelist/minister. Elders are regarded scripturally as the"rulers" in God's house. (1 Tim. 3:4-5).

III. Church property

The elders, as God's authority in the church, sign for the legal documents

of all church property. They remain in positions of authority that may not be compromised while they serve. Only in the absence of elders serving in a local congregation would there be any occasion for doing otherwise. Elders sign for property because they are God's authority in all matters--including matters of property.

IV. Voting

Having been a member of the chuch of Christ for 40 years, and having served as minister/ evangelist/ deacon in a number of different congregations, I have never, while serving under elders, voted on any matter in a meeting where the elders were being challenged. Even "straw votes" have been rejected as pressure tactics that could undermine the God-given authority of elders.

V. History/customs/doctines

Churches of Christ believe that the church was established in 33 A.D. on the day of the Pentecost when the apostle Peter preached the first sermon. (Acts 2). Inspired scriptures written during the first century are, we believe, the only source of Biblical authority in church matters. We recognize no doctrine, creed or tradition of men as having any weight. (II Tim. 3:15). There is no need for any other because by it the man of God is thoroughly funished unto all good works. (1I Tim. 3:17).

/s/ George M. Brown, Ph.D.
Church of Christ Minister
Hialeah, Florida

SWORN TO AND SUBSCRIBED before me this 13th day of November, 1984

My commission expires:

NOTARY PUBLIC STATE OF FLORIDA MY COMMISSIONEXP. FEB. 23, 1988 BONDED THRU GENERAL INS. UND. /s/ Notary Public

AFFIDAVIT

November 5, 1984

THE ORGANIZATION OF THE CHURCH OF CHRIST

The Churches of Christ have no head-quarters on earth. Each congregation is autonomous, and no congregation is over or dictates to another congregation. Each congregation selects its own Elders to Oversee (Rule and Govern) the flock as is suggested in Acts 14:23, Acts 20:28, Heb. 13:7, 1 Tim 3:5.

Elders Rule The Church (1 Tim. 5:17) Deacons, Preachers, and members work under the oversight of the Eldrs. The latter do not have authority equal to or superior to the elders.

There is no earthly authority superior to the Elders of the Local Church.

Minister,

/s/ LaRue Stocker

NOTARIZATION

/s/ Wm. B. King

Seal and Signature of Notary Public

NOTARY PUBLIC STATE OF FLORIDA MY COMMISSION EXPIRES APR. 9, 1986 BONDED THRU GENERAL INS. UNDERWRITERS

AFFIDAVIT

To Whom It May Concen:

....

....

The Elders then are responsible for seeing that the church runs smoothly, the flock is cared for, the money is handled correctly and that the gospel is preached. (Jas. 5:14) (1 Tim. 5:17-18) (1 Pet. 5:1-4). We believe that it is impossible to remove an Elder from office without a scriptual reason. When there is scriptual reason, the removal must be done according to bible guidelines and not be a popular vote. (Matt. 18:15-17) (1 Tim. 5:19-20). No one can be voted in or out of office in the Lord's Church because he has already set guidelines as to how each office is filled and terminated. Everythilng must be done according to scripture. Hopefully this

will make clear, the way the Church of Christ is organized.

I have been preaching for 30 years. The last 5 years at Coconut Grove.

Respectfully,

/s/ A.B. Alford

Evang. A.B. Alford

Coconut Grove Church of Christ

3345 Douglas Rd.

Coconut Grove, Fla. 33133

/s/ Olivia L. Edwards

Notary Public

AFFIDAVIT

Elders

The Church of Christ are an organized body of Bible believing Christians who accept no other guide or rule book. The Bible is our guide for all religious matters. No person or group within the Churches of Christ can exercise authority over that which is written in the Bible.

The church of Christ was established on Pentacost in the city of Jerusalem. Our organized history dates back to Acts chapter two of the New Testament.

Organized congrgations had elders or bishops and their responsibility was and is to look after the spiritual welfare of the members. Their sphere of work is confined to one congregation, the one whlich selected them.

Men who hold the position of elder in the church must be men who are unusually well qualified. These qualifications are recorded in 1 Timothy chapter three, verses one through seven, and Titus, chapter one, verses five throught nine. All requirements must be met. Once a man is appointed to this position, there are no scriptural grounds for his removal unless, at some time in the future he fails to continue to meet the scriptural qualifications.

If and when an elder sins he is not automatically disqualified from serving in that position. If he sins and refuses to seek forgiveness of his sins, he then disqualifies himself from that position. Reference should be taken of 1 Timothy, chapter five, verses nineteen and twenty.

Voting an elder out of his position is not Biblical and is not practiced in churches of Christ as seen from the reference text given.

....

/s/ Joseph H. Brown

(Minister Church of Christ, Richmond, Virgini

Subscribed and sworn beforem me this 8th day of Novmber, 1984.

/s/ Sandy L. Balducci

My Commission Expires June 7, 1983

EXCERPT FROM WARRANTY DEED

BOOK 3963 PAGE 50

WARRANTY DEED

THIS INDENTURE, Made this 23rd day of August, A.D. 1954.

BETWEEN FRANCES HARGREAVES LANCASTER, an unmarried woman,

of the County of Dade, in the State of Florida, party of the first part, and BOOGAN JAKE BLACK, MANNIE BLACK and MOSES WILLIAMS, as Trustees for the CHURCH OF CHRIST, located at 1236 N.W. 67th Street, of the County of Dade, in the State of Florida, parties of the second part.

Witnesseth, that she said party of the first part, for and in consideration of the sum of TEN DOLLARS AND OTHER GOOD AND VALULABLE CONSIDERATIONS to her in hand paid by the parties of the second part, the receipt whereof is hereby

acknowledged, has granted, bargained and sold to the parties of the second part, their heirs and assigns, forever, the following described land situate, lying and being in the County of Dade and State of Florida, to-wit:

....

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

CASE NUMBER: 83-11427(12)

MANNIE BLACK, et al.
Plaintiffs/
Counter/Defendants,

vs.

FREEMAN T. WYCHE,
Defendant,
Counter/Plaintiff.
_____/

MOTION AND MEMORANDUM OF LAW REGARDING

MOTION FOR SUMMARY JUDGMENT

Plaintiffs/Counter-Defendants, by and through undersigned counsel, hereby file this Memorandum of Law in Opposition to Defendant/Counter-Plaintiff's Motion for Summary Judgment and state as follows:

I. STATEMENT OF FACTS

....

II. ARGUMENT

It has been clearly established that where the dispute involves a

hierarchical church or organized body of churches of a similar fiath and subject to an established ecclesiastical authority, the state courts must defer to the hierachical authority. Watson v. Jones, 80 U.S. 679 (1872); Gonzalez v. Roman Catholic Archbishop of Manila, 280 U.S. 1 (1920); Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952); Presbyterian Church v. Mary Elizabeth Blue Hall Memorial Presbyterian Church, 393 U.S. 440 (1969); Kreskik v. St. Nicholas Cathedral, 363 U.S. 190 (1960); Serbian Eastern Orthodox Church v. Milirojevich, 426 U.S. 969 (1976); Jones v. Wolf, 443 U.S. 595 (1979).

The ruling of the ecclesiastical authority must be enforced by the civil courts. ID. The highest ecclesiastical authority, or assembly in some religions or clerical superiors in others, is the

final arbiter of church doctrine and authority. In the instant case, the elders of each congregation are the ecclesiastical authority, and thus civil courts are required to uphold the authority of this rule making body.

....

Defendant/Counter-Plaintiff states that absent a trust of church assets, the assets belong to the majority and are subject to its control. Defendant further asserts that there is no trust in this case. This is totally incorrect. The church's real property was deeded to Plaintiffs as trustees for the Church of Christ. (See Exhibit A). Plaintiffs are the subcribers to the non-profit corporation, Church of Christ. (See Exhibit B). Although no formal trust agreement in writing exists, it should be noted that a trust may be created by deed

or may rest entirely in parol or may be partially in writing and partially in parol. In Re Craffs Estate, 320 So.2d 874 (Fla. 4th DCA 1975), Fraser v. Lewis, 187 So.2d 684 (Fla. 3rd DCA 1966).

All the evidence shows that the Church of Christ is operated and maintained by the elders. The elders have complete authority to make any decisions concerning the Church of Christ since they founded it and since they are the trustees fosr the church.

....

Respectfully submitted,

ELLIS RUBIN LAW OFFICES, P.A.

Attorneys for Plaintiffs

....

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

CASE NO: 84-2800

MANNIE BLACK and
MOSES WILLIAMS,

Appellants,

vs.

MINISTER FREEMAN T. WYCHE,

Appellee.

Excerpt from brief of Petitioners:

Plaintiffs/appellants, as the ecclesiastical authority of the Liberty City Church of Christ, are entitled to have their rulings enforced by the civil courts.

....

It has been clearly established that where the dispute involves a hierarchical church or organized body of churches of a similar faith and subject to an established ecclesiastical

authority, the state courts must defer to the hierarchical authority and the rulings of the ecclesiastical authority must be enforced by the civil courts.

Supreme Court, U.S.
FILED
DEC 12 1985
JOSEPH F. SPANIOL, JR.
CLERK

85-818 (2)

IN THE UNITED STATES SUPREME COURT

CASE NO.

MANNIE BLACK and MOSES WILLIAMS,
Petitioners/Appellants

vs.

FREEMAN T. WYCHE,
Respondent/Apellee

On Writ of Certiorari to the District Court
of Appeal of Florida for the Third District

RESPONDENT BRIEF IN OPPOSITION OF PETITION FOR WRIT OF CERTIORARI

LAW OFFICES
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(305) 576-1500

BEST AVAILABLE COPY

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TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

AMENDMENT 1, UNITED STATES CONSTITUTION
AMENDMENT 14, UNITED STATES CONSTITUTION

CASES:

G. AMEY, INC. v. GULF ABSTRACT, INC. 758 F.2d 1486 (11th Cir 1985)

JONES v. WOLF 443 US 595(1979)

MOSES WILLIAMS and MANNIE BLACK v. FREEMAN T. WYCHE (Fla. 3rd DCA 1983) 440 So.2d 364

MOSES WILLIAMS and MANNIE BLACK v. FREEMAN T. WYCHE, 104 S.Ct. 2145, (1984)

MOSES WILLIAMS and MANNIE BLACK v. FREEMAN T. WYCHE, 472 So.2d 1195 (Fla. 3rd DCA 1985)

SYNANON FOUNDATION, INC. v. CALIFORNIA 444 U.S. 1307 (1979)

OTHER AUTHORITIES:

ADAM AND HANLON, JONES v. WOLF: CHURCH ANTONOMY AND THE RELIGION CLAUSE WITH THE FIRST AMENDMENT 1128 U Pa. L. Rev. 1291, 1292, (1980)

STATEMENT OF THE CASE

On March 31, 1983, Appellants filed a Verified Complaint for Injunctive Relief, Declaratory Judgement and Damages. [1]On April 4, 1983, the Appellee filed a Sworn Counterclaim for Injunction and Other Relief (App. A). [2]An Emergency Hearing on the respective parties Motion for Preliminary Injunction was held at which time the Trial Court ordered the Appellants to release all church property. (App. B). The Trial Court also ordered an election of Elders of the church, by majority of the eligible members of the LIBERTY CITY CHURCH OF CHRIST, and to determine who would serve as Minister. Consistent with the Court's Order a meeting was held, following notice to all members, in which the majority of the Church membership sustained its original decision to retain the Appellee/Minister and to dismiss Appellants/Elders.

The principals in the case at bar serve in their respective positions as servants of the LIBERTY CITY CHURCH OF CHRIST is not governed by a "Mother Church" and as such is an independent Church body. The phrase "Church of Christ" represents a commonality between countless independent churches that recognize the doctrine taught by the New Testament of the "Church of Christ." Any individual, whether Elder, Minister, or otherwise, serving in an authoritative or representative capacity is appointed to such position by the majority of the respective Church of Christ. Consequently and removal from such a position is dictated by the majority membership. The Elders do not in and among themselves constitute a "rule making body." The "rules of order" are dictated by the New Testament of the Church of Christ and are implemented by the Minister and Elders conditioned on the approval or disapproval of the church membership represented by a majority voice.

1 Reference to Appellants' Appendix is followed by "Appellants' App". and page number.

2 Reference to the Appendix in Appellees Brief is by the abbreviation "App".

This case arose through a dispute between Apellants, former Elders of the Church, and Appelle, the Minister. The Elders attempted to terminate the Minister. The Minister's continued employment was predicated on the action by the majority of the Church members. The action of the membership was voiced through the Elders, whose appointment and tenure was predicated on the voice of the majority of the church membership. Consequently, the Elders of the Church were not empowered with unilateral authority to terminate the Minister. Any termination without majority membership approval was without effect.

Action was taken by the Minister and the members of the Church to dismiss the Appellants as Elders of the Church at a regularly scheduled meeting on March 8, 1983. The Appellee was retained as the Minister. The Appellee and his family have continued to reside in the Church's parsonage, pursuant to his tenure as Minister. The request by the Appellants to remove the Appellee from the parsonage was ultra vires in nature and without consent of the majority of the Church members. Furthermore, any action taken by or against the Appellee, with respect to the issues herein, was inputed to his family.

Any and all authority granted to the Appellants as Elders of the Church to handle the Church's financial affairs was subject to majority control. Consequently, the Appellants were without unilateral authority to handle those affairs as they saw fit. When the Church members removed the Appellants as Elders of the Church, any and all authority over the financial affairs by the Elders was also taken from them.

The District Court of Appeal of the Third District of Florida affirmed the Trial Court's decision in favor of the Appellee per curiam. MOSES WILLIAMS and MANNIE BLACK v. FREEMAN T. WYCHE, (Fla. 3rd DCA 1983) 440 So. 2d 364. The Appellants then sought review of that decision by the United States Supreme Court by asserting that this Court had jurisdiction over this matter invoked under Title 28, United States Code, Section 28.MOSES WILLIAMS and MANNIE BLACK v. FREEMAN T. WYCHE, 104 S. Ct. 2145, (1984). Appellants alleged that the Trial Court's Order was a violation of the First and Fourteenth Amendments to the United States Constitution,as amended. This Court dismissed the appeal for want of jurisdiction.

Subsequent to this Court's 1984 decision, the Appellee filed a Motion for Summary Judgment and Amendment to Motion for Summary Judgment (App. C.) The substance of the Motion was based on the what had become the "law of the case" to wit: that the vote by the majority of the membership of the LIBERTY CITY CHURCH OF CHRIST, an independent congregational church, confirming the Appelle's position as Minister and dismissing the Appellants as Elders was a binding decision. Furthermore, the trial court's directive requiring such a vote was legally proper. By order dated November 28, 1984, the trial court sustained the Appellee's Motion for Summary Judgment. (Appellants App. 14-16). Subsequent to issuance of the Summary Judgment, the Appellants took a second appeal to the Third District Appellate Court of Florida seeking the review of the trial court's latest decision. Once again the Florida Appellate Court sustained the trial court's ruling in a per curiam affirmed decision. MOSES WILLIAMS and MANNIE BLACK v. FREEMAN T. WYCHE, 472 So. 2d 1195 (Fla.3rd DCA 1985). More significantly the Florida Appellate Court issued its decision in the absent of oral argument. Abusing the legal process, the Appellants now ask this Court to review again the very issue that has been disposed of five times, and adverse to their interest, to wit, twice by the trial court, twice by the Third District Appeals Court of Florida and more significantly once by this Court in its earlier ruling. Again the substance of their argument is that the First and Fourteenth Amendments to the United States Constitution prohibit the State Court from interferring in the matter at hand.

ARGUMENT

THE SUBJECT APPEAL SHOULD BE SUMMARILY DISMISSED BASED ON THE LEGAL PRINCIPLE OF RES JUDICATA

In their first appeal to this Court WILLAMS v. WYCHE 104 S. Ct. 2145 (1984) supra, the Appellants couched the issue as follows:

> WHETHER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION PROHIBIT A STATE COURT FROM OVERRIDING THE DECISIONS OF THE GOVERNING BOARD OF A NON-INDEPENDENT CHURCH IN ITS SELECTION OF MINISTER, REQUIRING THE RELIGIOUS INSTITUTION TO HOLD AN ELECTION OF THE CONGREGATION IN ORDER TO DETERMINE THE LEADERSHIP AND CONTROL OF THE INSTITUTION AND OF THE CHURCH PROPERTY

In the current appeal the Appellants present the following issue for resolution by the Court,

> WHETHER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION PROHIBIT A STATE COURT FROM REJECTING DECISIONS OF THE HIGHEST GOVERNING BODY OF A CHURCH ON QUESTIONS OF CHURCH DOCTRINE, LAW AND THE CONTROL

OF CHURCH PROPERTY, BY REQUIRING AND UPHOLDING AN ELECTION TO RESOLVE THE DISPUTE BY MAJORITY RULE, WHERE THE CHURCH, THOUGH GOVERNED WITHIN THE CONGREGATION, IS PART OF A BODY OF CHURCHES WHICH SUBSCRIBE TO A FORM OF CHURCH GOVERNMENT WHICH VESTS AUTHORITY IN CERTAIN CHURCH OFFICERS AND PROHIBITS THE RESOLUTION OF DISPUTES BY VOTING.

As is readily apparent the arguments are synomous. The thrust of the entire litigation evolves around the central issue of:

WHETHER THE ELDERS OR A MAJORITY OF THE CONGREGATION OF AN INDEPENDENT CONGREGATIONAL CHURCH HAVE THE FINAL AUTHORITY TO DETERMINE THE TENURE OF THE MINISTER.

From the filing of their initial complaint, where the Appellants sought to have the Appellee remove as Minister and for him and his family to relinquish possession of the church parish and other church property, to this their fourth appeal, the Appellants have been on a forum shopping expedition hoping to obtian relief. On five (5) previous occasions, including one by this court, the ruling has been that the Appellants' position is unfounded.

Clearly, this appeal should be dismissed under the well established and time honored doctrine of res juicata. AMEY, INC. v. GULF ABSTRACT AND TITLE INSURANCE 758 F. 2d 1486. The

appeal herein is no different in the substance of issues, the identity of the parties, the cause of action or capacity of the parties, than the previous appeals of the initial complaint filed by the Appellants. The previous denial of certiorari by this court is dispositive of the issues currently before this court. Once a party has had the opportunity to litigate a matter in an action, he should not be permitted to litigate the same issue again to the harrassment of his opponent.

THE STATE HAS A LEGITIMATE INTEREST IN RESOLVING
THE CHURCH'S PROPERTY DISPUTE AND A CIVIL COURT
IS A PROPER FORUM FOR RESOLUTION OF PROPERTY DISPUTES.

The Appellants are relying on the following unfounded principles (1) the First and Fourteenth Amendments of the U.S. Constitution prohibit the trial court from interferring in the affairs of a congregational church and (2) that they as Elders are the hierarchy of the Church and ecclesiastical authority of the LIBERTY CITY CHURCH OF CHRIST.

The First and Fourteenth amendments to the U.S. Constitution prohibits the state civil courts from exercising juridiction over purely ecclesiastical matters involved in church related disputes, but, it does nof forbid the courts from adjudicating property rights of the church of of the members, so long as such rights can be determined by the application of neutral principles of law developed

for use in all property disputes and which can be applied without "establishing" a church. JONES v. WOLF, 443 US 595, (1979). The Appellants even admit that their position as Elders were in the nature of employment. (Appellants App. 21). Their employment too was subject to the will of LIBERTY CITY CHURCH OF CHRIST congregation.

Contractional rights are "property rights" within the meaning of the foregoing premise. The tenure of the Appellee Wyche is clearly a property right issue who's dispute was properly resolved by the trial court and the subsequent "concurring" appellate decisions.

In SYNANON FOUNDATION, INC. v.CALIFORNIA, 444 U.S. 1307 (1979), Justice Rehquist stated that state courts could resolve property disputes, even when hierarchial church organizations were involved, in accordance with neutral principles of state property law. The Synanon Foundation case dealt with the Appellant's assertion that they as a church, were entitled to different treatment under the First and Fourteenth amendments to the U.S. constitution. The case at bar involves resolution of the Church's property dispute between the Appellants/Elders who have asserted that they are the hierarchy order this Church and the Appelle, the Minister who represents the Church's members. To the contrary, the Appellants do not constitute the hierarchy of the Church or an ecclesiastical authority. As the Appellants admit their former position as Elders was in the nature of employment. (Appellant App. 21). Obviously the employment was initiated from the voice of the congregation and not from the "mystical" authority or hierarchy authority of the Church of Christ.

The approach to church property litigation has evolved in response to PRESBYTERIAN CHURCH IN THE UNITED STATES v. MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH, 393 U.S. 440 (1969). That case involved a property dispute between a national Presbyterian organization and local churches of that organization. On remand, the Court adopted what is now known as the neutral principle of law method for resolving church property disputes.
The court examined the deeds of the property in question, as well as all documents relating to the matter, and awarded the property on the basis of legal title.

The other property involved in the case at bar is the Chruch's financial and parsonage and not any property interest of he Appellant. The Appellants, as the Elders, were entrusted in their position to be responsible for the church's funds. The parsonage is the home of the Minister/Appellee, during his tenure with the Church. The majority of the church's members voted to remove the Appellants as the Elders and to retain the Appellee as the Minister. This indicates a presumptive rule of majority representation.

In JONES v. WOLF, supra, there was a church property dispute arising from a schism in a local church affiliated with a hierarchial church organization in which the United States Supreme Court remanded the case for further proceedings where both the state trial court and the state's highest court in reaching their decision in favor of he majority fraction, applied a neutral principels of law approach which was developed in cases involving property disputes, without alluding to the fact that the local church itself was divided into fractions. In the case at bar, both the state trial court and the state's appellate court were cognizant of the fact that the church is split into two fractions because of the nature in which the case arose. The Appellants, as the Elders, are attempting to control the Church's property even though the majority of the church members, represented by the Appellee, voted the Elders from their position. The substance of the dipsute herein does not focus on a religious issue, but a simple issue of control of property owned by an independent congregational church body and the property rights created by the Appellee's employment tenure. The state's adopted presumptive rule of majority representation is consistent with both the First Amendment and the neutral principles analysis. JONES, supra.

Generally, there are two (2) distinct forms of church organization, congregational and hierarchial. A general summary of these forms of government is found in footnote 6 of ADAMS AND HANLON, JONES v. WOLF: CHURCH ANTONOMY AND THE RELIGION CLAUSE WITH THE FIRST AMENDMENT, 128 U. Pa. L. Rev. 1291, 1292 (1980) which provides;

> "A HIERARCHIAL ORGANIZATION HAS BEEN DEFINED BY THE SUPREME COURT AS A GENERAL ORGANIZATION OF CHURCHES HAVING A SIMILAR FAITH AND DOCTRINE WITH A COMMON RULING CONVOCATION OR ECCLESIASTICAL HEAD."

Such church includes the Episcopal and Presbyterial form of government. The article further and more significantly points out,

> IN CONTRAST TO THE HIERARCHICAL FORM OF ORGANIZATION. THE CENTRAL CHARACTERISTIC OF A CONGREGATIONAL POLITY IS THE ANTONOMY OF EACH LOCAL ENTITY. WHILE CONGRETIONAL CHURCHES SOMETIME AFFLIATE WITH OTHER RELIGIOUS ORGANIZATIONS, THEY GENERALLY RECOGNIZE NO SUPERIOR AUTHORITY OVER THE LOCAL ORGANIZATION. EXAMPLE OF A CONGREGATIONAL POLITY ARE PROVIDED BY THE NUMEROUS BAPTIST BODIES, THE JEWISH CONGREGATION, THE CHURCH OF CHRIST AND THE QUAKERS." (emphasis added)

The LIBERTY CITY CHURCH OF CHRIST is a congregational church, being completely autonomous and governed by majortiy rule. There being no hierarchial constitution or regulation governing the right of the church to contract, and no church asjudicatorian having jurisdiction to determine questions concerning such contracts, the controversy regarding Minister Wyche's employment and his use of church owned property can be determined solely by the application of neutral principles of law. Hence, the issue in this case is properly dispose of by a majortiy vote of the LIBERTY CITY CHURCH OF CHRIST.

The Appellants have asserted that as a matter of fact and as matter of church doctrine that they are the ecclesiastical authority and hierarchy head of the Church of Christ. Furthermore, this assertion makes the Church of Christ similar to the traditional Presbyterian and
Episcopal churches that are clearly controlled by hierarchy order. To take the position that the Elders are the ecclesiastical authority and can only remove themselves on their initiative, defeats the whole concept upon which a congregational church is based. (Appellant App. 40-54) To run Appellants positions to its full gambit leads to the unreasonable conclusion that the members of the church, and is particular the majority, have no voice in the church's operation. This attitude would allow an Elder to abuse his fiduciary position without the check and balance system offered in a con-

gregational setting. Furthermore, a mere assertion that the Appellants are hierarchial authorities flies in the face of the established rule that the Church of Christ is congregational in nature. The LIBERTY CITY CHURCH OF CHRIST is no different.

The trial court's initial decision requiring the LIBERTY CITY CHURCH OF CHRIST membership to hold the "court order" meeting was clearly consistent with the application of the neutral principles of law. The members elected to retain the Appellee as Minister and to remove the Appellants as Elders.

CONCULSION

All of the Churchs of Christ have the congregational system of government. They are independent sovereignties and exclusively self-governing units. Hence it must follow that a majority of the membership, in any given congregation of the Church's of Christ, is entitled to control the church property and direct and control the administrative affairs of the congregation including the employment of a Minister.

The Court should disregard the Appellants' attempt to cloud the issues by characterizing the dispute as one over religious doctrine and property ownership. The true issue is whether the majority of the members of the LIBERTY CITY CHURCH OF CHRIST have the right to decide who is authorized to implement the doctrine of he Church and lead the Church, oversee its daily operation and to be entrusted with the fiduciary responsibility of protecting Church owned property.

The Petition herein should be dismissed for a want of a substantial Federal question and on the principal of res judicate. Furthermore, the opinion of the District Court of Appeal for the Third District of Florida in applying the neutral principles of law analysis, which was consistent with the First and Fourteenth Amendments to the United States Constitution, should be affirmed.

Respectfully submitted,

LAW OFFICES
McCRARY, VALENTINE & MAYS

BY Jesse J McCrary, Jr., ESQ
JESSE J. McCRARY, JR., ESQ
Attorney for Appellee

3050 Biscayne Boulevard
Suite 800
Miami, Florida 33137
(305) 576-1500

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that (3) copies of the foregoing Brief was mailed to: LISA BENNETT, Counsel for Petitioners, 304 Palermo Avenue, Coral Gables, Florida 33134 on this day of [illegible] 11 1985, 1985.

By Jesse J McCrary, Jr, ESQ

JESSE J. McCRARY, JR., ESQ.

APPENDIX A

IN THE CIRCUIT COURT OF THE 11TH JUDICAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

CASE NUMBER: 83-11427

MANNIE BLACK,
Plaintiff
MOSES WILLIAMS,
R.V. WALKER, and
COMPANY
Counter/Defendants

vs.

MINISTER FREEMAN T. WYCHE,
Defendent
MINISTER FREEMAN T. WYCHE
On Behalf of
LIBERTY CITY CHURCH OF CHRIST,
Counter/Plaintiff.

SWORN COUNTER-CLAIM FOR INJUNCTIVE AND OTHER RELIEF

COMES NOW, the Defendent/Counter-Defendant, MINISTER FREEMAN T. WYCHE, on behalf of LIBERTY CITY CHURCH OF CHRIST, by and through its undersigned Attorney and files this its Sworn Counter-Claim for Injunction and Other Relief against Counter-Plaintiffs, MOSES WILLIAMS, R. V. WALKER and COMMERCIAL BANK AND TRUST COMPANY and COMMERCIAL BANK AND TRUST COMPANY and alleges:

GENERAL ALLEGATIONS

(1) That the LIBERTY CITY CHURCH OF CHRIST is a non-profit entity doing business at 1263 N.W. 67 Street, Miami Dade County, Florida (hereinafter referred to as "Church"). MINISTER FREEMAN T. WYCHE is the Minister of said Church and its Chief Operating Officer.

(2)That the COMMERCIAL BANK AND TRUST COMPANY is a Florida Banking Institution incorporated under Florida Law

and is doing business in Dade County, Florida at 9301 N.W. 7th Avenue, Miami, Florida (hereinafter referred to as "Bank").

(3)The MOSES WILLIAMS is a resident of Miami, Dade County, Florida and over the age of eighteen (18) years and sui juris.

(4)That R. V. WALKER is a resident of Opa Locka, Dade County, Florida and over the age of eighteen (18) years and sui juris.

(5)That MOSES WILLIAMS serves in the capacity as Treasurer of the Church and R. V. WALKER served in the capacity as Secretary.

(6)That the Church maintained a checking account with the Bank, account number 000-6950-000 (hereinafter referred to as "Account").

(7)That R. V. WALKER and MOSES WILLIAMS were given the fiduciary responsibility, exclusive of other members of the Church or any other individual, the authority to endorse all checks issued on the Church Account specified herein and to handle other Church financial matters such as savings, Certificate of Deposits and authority of bookkeeping, etc.

(8)That on or about March 10, 1983, R. V. WALKER and MOSES WILLIAMS signed a check on the Account herein in the amount of SEVENTEEN THOUSAND EIGHT HUNDRED FIFTY-FIVE DOLLARS AND EIGHTY-EIGHT ($17,855.88) CENTS. Said check was paid to the order of LIBERTY CITY CHURCH OF CHRIST and was withdrawn from the Account for the specific purpose of closing the same.

(9)That MINISTER FREEMAN T. WYCHE discovered that the church Account has been closed on March 16, 1983, which was further confirmed by the Bank Statement dated March 11, 1983.

(10)That R. V. WALKER and MOSES WILLIAMS unlawfully and maliciously closed said Account without the expressed or implied consent of MINISTER WYCHE or by any other resolution fo the members of the Chruch.

(11)That MINISTER WYCHE immediately approached MOSES WILLIAMS AND R. V. WALKER to determine why said Account had been closed and as to the wherabouts of the funds deposits therein.

(12)That after failing to get an adequate response from R. V. WALKER and MOSES WILLIAMS as to why said Account had

been closed, MINISTER WYCHE was informed, however, that the funds had been transferred to the individual account of MOSES WILLIAMS and R. V. WALKER located at the Bank.

(13)That an official at the Bank informed MINISTER WYCHE that the Church funds had in fact been closed. The Bank official failed to provide MINISTER WYCHE with further information on the grounds that MOSES WILLIAMS, R. V. WALKER, and G. MANNIE BLACK were the only individuals authorized to endorse the Church's checks at the Banks and otherwise handle the Church's Account or that MINISTER WYCHE was not an authorized individual to sign on the Account.

(14)The Church passed a resolution authorizing new individuals to endorse and execute on a new account to be established by the Church at the Bank and tendered the same to an official of the Bank; however the BANK has refused to accept said resolution on the grounds that the Account was closed.

(15)That personal demand and mail demand by certified receipt has been served on R. V. WALKER and MOSES WILLIAMS, requesting that they return the subject funds to the Church's account and/or to MINISTER WYCHE; however to date they have refused the Church's request.

(16)That the Bank by refusing to provide the Church with adequate information to determine the specific account in which the funds are deposited, to disclose the amount of said funds, and additional other pertinent information concerning said funds, continues to assist the Counter-Defendants, R. V. WALKER and MOSES WILLIAMS, in the continued unlawful conversion of the Church's funds.

(17)That in addition to the Checking Account mentioned herein, Counter/Defendant, R. V. WALKER and MOSES WILLIAMS are also responsible for the Certificates of Deposit (hereinafter referred to as "C.Ds.") that are located at the Bank. Said C.Ds. are believed to total an approximate amount of TWELVE THOUSAND ($12,000.00) DOLLARS.

(18)That despite numerous requests by MINISTER WYCHE on behalf of the Church, the Defendants, R. V. WALKER and MOSES WILLIAMS have failed to disclose with respect to the amount and any other pertinent information concerning said C.Ds.

(19)That the Church has reason to believe that said C.Ds. have been unlawfully converted to the account of R. V. WALKER and MOSES WILLIAMS, or otherwise misappropriated from the

church's C.Ds. account by R. V. WALKER and MOSES WILLIAMS. COUNT I— INJUNCTION

(20)That this is and action for Injunctive Relief.

(21)That Defendant/Counter-Plaintiff adopts and realleges the allegations contained in Paragraphs One (1) through Twenty (20).

(22)That the church has continued to incur debts and other obligations that cannot be satisfied due to the closing of the Church's Checking Account and the unauthorized transferring of said funds therein by the Counter-Defendants to disclose any information concerning the Certificates of Deposits.

(23)That the Church believes that the Counter-Defendants will continue to dissipate the church's funds, unless immediate action is taken to demand the return of the subject funds an accounting of the same.

(24)That unless said funds are returned immediately to the Church and an immediate accounting of the same is made, it will suffer irreparable loss and damages and may be forced to close its doors.

(25)That the Plaintiff is currently suffering irreparable loss and damages.

(26)That there is absolutely no adequate remedy of law for which the church can avail itself to.

(27)That Counter-Plaintiff request a Temporary Restraining Order be issued against the Counter-Defendants, COMMERCIAL BANK AND TRUST COMPANY, R. V. WALKER and MOSES WILLIAMS,without Notice enjoining from releasing, transferring or otherwise disposing of funds, which funds are currently in Counter-Defendants' possession.

If Counter-Plaintiff is required to give Notice of Application for said Temporary Restraining Order, it would cause a delay, Plaintiff will continue to suffer the irreparable damages stated herein.

(28)That Counter-Plaintiff has retained the firm of JESSEE J. McCRARY, JR., P. A. to represent it in this matter and has agreed to pay the firms a reasonable attorney's fee. Plaintiff is entitled to attorney's fee consistent with Florida Statute 57.105.

WHEREFORE, Defendants/Counter-Plaintiff prays as follows:

(a)That a Temporary Restraining Order be issued without Notice restraining the Counter-Defendants, COMMERCIAL BANK AND TRUST COMPANY, R. V. WALKER and MOSES WILLIAMS

from releasing, transferring or otherwise disbursing Church funds detailed herein.

(b)That a hearing be had forthwith in Plaintiff's Application for a Preliminary Injunction.

(c)That a Preliminary Injunction be issued enjoining Counter-Defendants, COMMERCIAL BANK AND TRUST COMPANY, R. V. WALKER and MOSES WILLIAMS from releasing, tranferring or otherwise disbursing Church funds to individuals not authorized by the church.

(d)That on final hearing, Counter-Defendants, COMMERCIAL BANK AND TRUST COMPANY, R. V. WALKER and MOSES WILLIAMS be enjoined from releasing, transferring or otherwise disbursing Church funds to individuals not authorized by the Church.

(e)That damages, both compensatory and punitive, be assessed against Counter-Defendant, COMMERCIAL BANK AND TRUST COMPANY, R. V. WALKER and MOSES WILLIAMS for all damages caused by Defendants' actions.

(f)That Counter-Plaintiff be awarded damages as aforesaid, interest, costs and attorney's fees.

(g)That this Court order such additional relief as may be just and equitable.

COUNT II - CONVERSION

(29)This is an action for conversion and damages in excess of FIVE THOUSAND ($5,000.00) DOLLARS.

(30)Plaintiff adopts and re-alleges the allegations contained in Paragraphs One (1) through Twenty-Nine (29) and further alleges:

(31)That the acts complained of in the Complaint herein constitute conversion for which the Defendents, COMMERCIAL BANK AND TRUST COMPANY, R. V. WALKER and MOSES WILLIAMS are responsible for damages caused by their action.

WHEREFORE, Counter-Plaintiff prays:

(a)That damages, both compensatory and punitive, be assessed against the Defendants' actions.

(b)That Counter-Plaintiff be awarded damages as foresaid, interest, cost and attorney's fees.

(c)That this Court order such additional relief as may be just and equitable.

COUNT III - ACCOUNTING

(32)That this is an action for accounting as to all Church funds

and financial matters for which the counter-Defendants, R. V. WALKER and MOSES WILLIAMS are privity to or otherwise have control and authority over with damages in excess of FIVE THOUSAND ($5,000.00) DOLLARS.

(33)Counter-Plaintiff adopts and re-alleges the allegations contained in Paragraphs One (1) through Thirty-Two (32) and further alleges:

(34)That in addition to checking account and Certificates of Deposit mentioned herein, the Counter-Defendants, R. V. WALKER and MOSES WILLIAMS held a fiduciary responsibility to maintain the Church's financial records.

(35)That despite many requests by the Counter-Plaintiffs to the Counter-Defendants, R. V. WALKER AND MOSES WILLIAMS to release the financial record and to otherwise disclose information in said records,the Counter-Defendents, R. V. WALKER and MOSES WILLIAMS have failed to disclose said information.

(36)The exact amount contained in the financial records or other information contained therein is unknown to the Plaintiff and cannot be stated herein, that the transactions contained in said records are so voluminous that a correct amount or statement of the nature of the information contained therein cannot be ascertained without an accounting.

WHEREFORE, Counter-Plaintiff prays that:

(a)That the Counter-Defendents, R. V. WALKER and MOSES WILLIAMS be compelled to account for all transactions for which they are responsible as alleged herein.

(b)That said Counter-Defendent be ordered to pay the amount to be due from the Counter-Defendants to the Counter-Plaintiff as a result of the account, including interest.

(c)That Counter-Plaintiff be awarded cost and attorney's fee.

(d)That this Court order such additional relief as may be just and equitable."

MINISTER FREEMAN T. WYCHE

STATE OF FLORIDA)
COUNTY OF DADE)SS

BEFORE ME, the undersigned authority, personally appeared MINISTER FREEMAN T. WYCHE, to me well known to be the person described in and who executed the foregoing Sworn Complaint for Injunction and other Relief, who, upon first duly sworn,deposes and state that he has read the foregoing Sworn Complaint, that the allegations therein are true and correct and that he executed the same for the purposes therein expressed.

WITNESS my hand and official seal at Miami, said County and State, this _____ day of April, 1983.

_____

NOTARY PUBLIC, State of Florida
at Large

My commission expires:

_____

APPENDIX B

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND OR DADE COUNTY, FLORIDA

CASE NUMBER: 83-11427 (12)

MANNIE BLACK,
Plaintiff
MOSES WILLIAMS, Plaintiff
R. V. WALKER and
COMMERCIAL BANK AND TRUST COMPANY,
Counter/Defendants

vs. ORDER

MINISTER FREEMAN T. WYCHE,
Defendant,
MINISTER FREEMAN T. WYCHE
on behalf of
LIBERTY CITY CHURCH OF CHRIST
Counter/Plaintiff.

_____ /

THIS CAUSE having come before this Court on a Verified Complaint for Injunctive Relief, Declaratory Judgement and Damages by the Plaintiffs/Counter-Defendant and a Sworn Counter-Claim for Injunction and other Relief by Defendant/Counter-Plaintiff, MINISTER FREEMAN T. WYCHE, on behalf of the LIBERTY CITY CHURCH OF CHRIST,the Court having heard argument of Counsel and being otherwise fully advised,

IT IS ORDERED AND ADJUDGED

(1)The Plaintiffs'/Counter-Defendent's and Defendants's/Counter-Plaintiff's request for injuctive relief is hereby DENIED.

(2)That the Plaintiffs/Counter-Defendant are directed to return all funds withdrawn from the LIBERTY CITY CHURCH OF CHRIST checking account and money-market account at COMMERCIAL BANK AND TRUST COMPANY to MINISTER FREEMAN T. WYCHE, on behalf of the LIBERTY CITY

CHURCH OF CHRIST. MINISTER WYCHE is hereby directed to deposit said funds into the CHURCH'S account at CAPITAL BANK and to maintain an accounting of the same. The action herein should take place immediately. The CHURCH is further directed attributable to its operation. Attorney's fees and legal expenses are not to be paid out of said funds until further ordered by this Court.

(3)It is further ordered that the CHURCH schedule a meeting of eligible members of the LIBERTY CITY CHURCH OF CHRIST. Said meeting shall include, but not be limited to, the following issues:

(a)Which individual (s) shall continue to serve as elders of the CHURCH.

(b)Which individaul (s) shall serve as minister of the CHURCH.

That said meeting shall be noticed by mail or posted notice. Said notice should include, but not be limited to, time, date, location and purpose of meeting. The minutes of said meeting shall be recorded by a legal stenographer (i.e. Court Reporter).

(4)Supersedeas bonds are hereby DENIED.

DONE AND ORDERED in Chamber at Miami, Dade County, Florida this _____ day of _____ , 1983.

_____

CIRCUIT COURT JUDGE

Copies furnished to:

Commercial Bank and Trust Co.
Ellis Rubin, Esq.
R. V. Walker
Mark A. Valentine, Esq.

APPENDIX C

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NUMBER: 83-11427 (12)

MANNIE BLACK
and
MOSES WILLIAMS,
Plaintiffs/
Counter-Defendants,

and

ROOSEVELT WALKER,
Counter-Defendent,

vs.

MINISTER FREEMAN T. WYCHE,
Defendant/
Counter-Plaintiff.

COMES NOW, the Defendant/Counter-Plaintiff, MINISTER FREEMAN T. WYCHE, by and through his undersigned Counsel and files this his Motion for Summary Judgment and states:

STATEMENT OF CASE

The Plaintiffs/Counter-Defendants initiated the action by filing a Verified Complaint for Injunctive Relief, Declaratory Judgement and Damages. The substance and heart of the three (3) count Complaint lies in the controversy of whether the Plaintiff/Counter-Defendants, as Elders of the LIBERTY CITY CHURCH OF CHRIST, have the power to remove the Defendant/Counter-Plaintiff as Minister of the subject Church. Inherent in this issue and expressly stated in the remaining counts of the Complait are the issues of (1) the respective interest that the parties have in the Church property and (2) whether the Defendant/Counter-Plaintiff's continuous possession of the Church parsonage by him as Minister constitutes conversion. A decision by the Court concerning the initial issue of the Defendant/Counter-Plaintiff's continued employment will be dispositive of the remaining issues concerning the Church property.

UNDISPUTED FACTS

In order for this Court to grant a Motion for Summary Judgement there must not exist a genuine issue of material facts. While the Movant concedes the there are certain issues of fact in dispute, the following issues of facts are those material and necessary for the Court to resolve the Motion Hearing and are facts which are not in dispute. The undisputed facts are as follows:

(1)The Defendant/Counter-Plaintiff, MINISTER FREEMAN T. WYCHE has served as Minister of the LIBERTY CITY CHURCH OF CHRIST since approximately March, 1979.

(2)That prior to his appointment as Minister, the Defendant/Counter-Plaintiff was subjected to a "screening and interviewing" process along with several other candidates.

(3)That the interviews were conducted by several Elders and Officials of the Church, including the Plaintiffs/Counter-Defendants.

(4)That following the completion of the process, the Church officials concluded that MINISTER WYCHE was the proper candidates for the job of Minister.

(5)The appointment of MINISTER WYCHE by the Church officials, including the Plaintiffs/Counter-Defendants, was confirmed by the membership of the membership of the LIBERTY CITY CHURCH OF CHRIST

(6)As Minister of the LIBERTY CITY CHURCH OF CHRIST, MINISTER WYCHE and his family were given the privilege of residing in the Church Parsonage location at 1295 N.W. 67 Street, Miami, Florida, adjacent to the Church and 2406 N.W. 67 Street, Miami, Florida

(7)Since his appointment as Minister, the Defendant/Counter-Plaintiff has resided at the Parsonage with his family and has made no attempt to transfer title and maintain possession contrary to his continued employment as Minister.

(8)That sometime during February, 1983, MINISTER WYCHE was provided with a "Notice of Termination" effective May 31, 1983. The notice was signed by the Elders of the Church, including the Plaintiffs/Counter-Defendants, WILLIAMS and BLACK. The Notice of Termination and effect of the same is the basis for the subject lawsuit.

(9)That on a Tuesday, on or about March 8, 1983, at a regular scheduled business meeting, the Church membership entertained a vote that dismissed the Plaintiffs/Counter-Defendants as Elders of the Church.

(10)That following the Court's Injunction Hearing, the Court ordered that the LIBERTY CITY CHURCH OF CHRIST membership conduct a meeting to determine the continued status of MINISTER WYCHE as Minister and the status of BLACK and WILLIAMS as Elders.

(11)The "Court Ordered Meeting" was held on or about March 28, 1983 and MINISTER WYCHE's position as Minister was confirmed by a majority vote, while BLACK and WILLIAMS were dismissed as Elders by a majority vote.

(12)At the time of the commencement of this action the LIBERTY CITY CHURCH OF CHRIST was not governed by an Article of Incorporation or by laws.

LEGAL ISSUES

WHETHER THE ELDERS, PLAINTIFF/COUNTER-DEFENDANTS OF THE LIBERTY CITY CHURCH OF CHRIST, AN INDEPENDENT—CONGREGATIONAL CHURCH BODY, HAVE THE UNILATERAL AUTHORITY TO TERMINATE THE SERVICES OF THE MINISTER, DEFENDANT/COUNTER-PLAINTIFF CONTRARY TO THE EXPRESSED WISHES OF THE MAJORITY OFTHE MEMBERSHIP.

The heart of the dispute is whether the Elders, Plaintiffs/Counter-Defendants of the LIBERTY CITY CHURCH OF CHRIST have unilateral authority to terminate the services of the Minister, to wit, the Defendant/Counter-Plaintiff, not withstanding the wishes of the majority of the membership.

THE LIBERTY CITY CHURCH OF CHRIST is not governed by a "Mother Church" or a church of some higher older in the church hierarchy. The phrase "Church of Christ" represents a commonality between countless independent churches that recognize the doctrine taught by the New Testament of the "Church of Christ". The LIBERTY CITY CHURCH OF CHRIST is related to other members of the "Church of Christ" faith through associations, conventions and alliances, etc. Otherwise each church operates independently and as such can adopt its own operation

procedures provided they are consistent with the religious teaching of the Church of Christ. The Church of Christ and particularly the THE LIBERY CITY CHURCH OF CHRIST operates as a democracy, to wit: majortiy rules.

When a civil court is asked to travel down the delicate path that separates church from state, it must do so by applying neutral principles of law" has as its foundation the theory of "majority rule". The applications of this principle can be applied to a dispute of a minister's employment contractual right which is a property right.

In Waters v. Hargert, 593 S.W. 2nd 364 (Tex. 1980), the membership of a Texas Baptist Church was involved in a squabble over the retention of its pastor. In reaching its decision the court concluded,

> "Since the church was a congregational one, being completely automonous and governed by majority rule, and there was no hierarchical constitution or regulations governing right to contract, and no church adjudicatories having jurisdiction to determine questions concerning such contracts, controversy regarding pastor's alleged employment contract could be determined solely by application of neutral principles of law, i.e., by the civil court."

Cognizant of this principle of law, the court ordered a special meeting for the congregation to resolve the issues confronting the church. The same principle was expounded in Atkins v. Walker, 200 S.E. 2nd 641 (No. Car. 1973). The North Carolina court in Atkins was faced with a church dispute involving the tenure of its pastor. Recognizing who constitutes the governing body of a congregational and independent church, like the LIBERTY CITY CHURCH OF CHRIST, the court reasonable that a majority of the membership is entitled to control church property and direct and control the administraive affairs of the congregation.

As stated in the factual allegation of the subject motion, this court directed the officials to call a meeting of the membership following due notice to the members. Furthermore, the meeting held by the LIBERTY CITY CHURCH OF CHRIST on March 28, 1983 was memoralize by a stenographer. At the subject meeting a vote was called to the membership in which the following issues

were presented: (1) retention of MINISTER WYCHE as Minister an (2) dismissal of BLACK and WILLIAMS as Elders. The initial question was answered in the affirmative by an overwhelming majority of the membership,while the second issue was answered in the negative by a corresponding majority. In determining whether a pastor of an independenat congregational church was properly removed or retained as pastor as represented by a vote of the church's congregation, the court is limited to determining whether the majority votes to retain the pastor, Graham v. Lockhart, 256 S.E. 2d 518 (No. Car. 1979).

The First District Court of Appeals of Florida had the opportunity to review the very issue confronting this Court, Convington v. Bowear, 442 So.2d 1068 (1st DCA 1983). A Panama City Baptist membership (i.e., independent and congregational in nature) was split between the retention of its minister. At a regularly scheduled church business meeting the issue of the pastor's tenure was raised. A vote was called on the issue resulting in the majority favoring to terminate his services. The key question before the court was whether the vote to terminate the pastor was binding as action of the church. The church did not have any by-laws (i.e., nor does LIBERTY CITY CHURCH OF CHRIST) and was governed by church custom. The appellate court refused to disturb the trial court findings that the meeting was duly assembled according to custom. Inherit in the custom was that majority vote ruled and the minority faction must abide by its wishes.

In a suit by expelled members of the church seeking to oust newly elected trustees, the courts are not concerned with the articles of faith or various factions nor with questions of whether articles or faith or religious doctrines of the factions have been respected or observed; the only question to which the reviewing court addresses itself is in regard to the right to control church property. Partin v. Tucker, 172 So. 89 (1937). Where a schism develops in the membership of a church which is congregational in its structure like independent Baptist dominations and no trust is attached to the church assets, the assets belong to the majority and are subject to its control. Austin v. Mt. Zion Primitive Baptist Church of West Palm Beach, 165 So.2d 412 (2DCA 1964). The civil courts may not constitutionally delve into matters of an eccelesiastic nature, but they have the right and the duty of applying and en-

forcing sterile principles of property law. New Magnolia Baptist Church, Inc. of Branford v. Ellerker, 353 So.2d 204 (IDCA 1977).

The case of Partin v. Tucker, 172 So. 89, 126 Fla. 817 (1973) is a leading authority in the instant case. In that case, expelled trustees sought declaratory relief adjudicating that an election of subsequent trustees by a majority vote of the congregation was void, that the subsequent trustees had no right to use or manage church property, that such right was vested solely in the expelled trustees and that the expelled trustees be reinstated in the church. In reversing the lower court which had granted plaintiffs/appellees prayer, the Florida Supreme Court relying on a number of state decisions in agreement, held as follows:

It appears to us that it must be conceded (1) that when a religious congregation . . . .at a regular conference meeting... expels members, that action is final and the courts cannot interfere to reinstate them, or to vest them with any power of control of church property; (2) that before trustees, or their orderly successors, may be deprived of the use and control for the purposes of the religious organization..., it must be shown that they have diverted the property to uses other than those contemplated in this acquisition and that such diversion will not result from a change adopted as to some articles of faith while the congregation adheres to the fundamental principles of Christian religious originally espoused.

At P. 93 (Omissions Mine).

Based upon this holding, the court reversed the circuit court's decree for plaintiffs/appellees stating that the record was devoid of evidence that the fundamental principles of he Christian religion had been abandoned by the congregation, that the record did affirmatively show that at a regular conference meeting of the church the plaintiffs/appellee had been expelled from the church and, therefore, had no rights "in the affairs of that church which can be adjudicated in the civil courts".

The LIBERTY CITY CHURCH OF CHRIST membership does not differ from the churches cited herein. The Liberty City membership administrative decision are expressed through the majority of the members. The membership by an unquestionable majority voted to oust MANNIE BLACK and MOSES WILLIAMS as Elders and to retain MINISTER FREEMAN WYCHE as Minister at its regular Tuesday weekly meeting of March 7, 1983 and at the Court Ordered Meeting of March 28, 1983. The ques-

tion of who should let the LIBERTY CITY CHURCH OF CHRIST was properly left to the members of the church and not to the unilateral decision of the Elders.

WHEREFORE, the Defendant/Counter-Plaintiff, MINISTER FREEMAN T. WYCHE respectfully request that this Court finds as a matter of law and fact the following:

(1)That MINISTER FREEMAN T. WYCHE is the Minister to the LIBERTY CITY CHURCH OF CHRIST.

(2)That MANNIE BLACK and MOSES WILLIAMS are no longer Elders of the LIBERTY CITY CHURCH OF CHRIST.

(3)That MINISTER FREEMAN T. WYCHE and family are in legal possession of the church owned property currently in their possession and in their possession at the time of the action herein was commenced to wit: real proeprty at 1263 N.W. 67 Street, Miami, Florida and 2406 N.W. 67 Street, Miami, Florida.

(4)That the Court enter a summary Judgement against the Plaintiffs/Counter-Defendants, MANNIE BLACK and MOSES WILLIAMS and dismiss their Complaint with prejudice.

Respectfully submitted,

LAW OFFICES
McCRARY AND VALENTINE

BY _____

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Suite 800
Miami, Florida 33137-4198
(305) 576-1500

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Summary judgement was mailed to: ELLIS RUBIN, ESQ., 265 N.E. 26 Terrace, Miami, Florida 33137 this day of October, 1984.

BY _____

MARK A. VALENTINE, ESQ.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NUMBER: 83-11427

MANNIE BLACK
and
MOSES WILLIAMS,
Plaintiffs
Counter-Defendants,

and

ROOSEVELT WALKER,
Counter-Defendent,

vs.

MINISTER FREEMAN T. WYCHE,
Defendant
Counter-Plaintiff.

ADMENDMENT TO MOTION FOR SUMMARY JUDGEMENT

Fla. Bar no. 295231

COMES NOW, the Defendant/Counter-Plantiff, MINISTER FREEMAN T. WYCHE, by and through his undersigned Counsel and files this is Amendment to Motion for Summary Judgement and states:

(1) That the original Motion for Summary Judgement is incorporated herein by reference and made a part herein except as amended herein.

(2) Paragraph number one (1) UNDISPUTED FACTS, is amended to read as follows:

"The Defendant/Counter-Plaintiff, Minister Freeman T. Wyche, has served as Minister of the Liberty City Church of Christ since approximately March 1978."

WHEREFORE, the Defendant/Counter-Plaintiff, MINISTER FREEMAN T. WYCHE respectfully request that this Court finds as a matter of law and fact the following:

(1) That MINISTER FREEMAN T. WYCHE is the Minister of the LIBERTY CITY CHURCH OF CHRIST.

(2) That MANNIE BLACK and MOSES WILLIAMS are no longer Elders of the LIBERTY CITY CHURCH OF CHRIST.

(3) That MINISTER FREEMAN T. WYCHE and family are in legal possession of the church owned property currently in their possession and in their possession at the time of the action herein was commenced to wit: real property at 1263 N.W. 67 Street, Miami, Florida and 2406 N.W. 67 Street, Miami, Florida

(4)That the Court enter a summary Judgement against the Plaintiffs/Counter-Defendants, MANNIE BLACK and MOSES WILLIAMS and dismiss their Complaint with prejudice.

Respectfully submitted,

LAW OFFICES
McCRARY AND VALENTINE

BY _____

MARK A. VALENTINE, ESQ.
Attorney for Defendant/Counter-Plaintiff
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BY _____

MARK A. VALENTINE, ESQ.

Supreme Court, U.S.
FILED
DEC 31 1985
JOSEPH F. SPANIOL, JR.
CLERK

NO:85-818

in the

Supreme Court

of the

United States

OCTOBER TERM, 1985

MANNIE BLACK and MOSES WILLIAMS,
Petitioners,

vs.

FREEMAN T. WYCHE,
Respondent.

On Writ of Certiorari to the District Court of Appeal of Florida for the Third District

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REPLY BRIEF OF PETITIONERS

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BEST AVAILABLE COPY

No. 85-818

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

MANNIE BLACK and MOSES WILLIAMS,
Petitioners,

vs.

FREEMAN T. WYCHE,
Respondent.

A. QUESTION PRESENTED FOR REVIEW

Whether the First and Fourteenth Amendments to the United States Constitution prohibit a state court from rejecting decisions of the highest governing body of a church on questions of church doctrine, law, and the control of church property, by requiring and upholding an election to resolve the dispute by majority rule, where the church, though governed within the

congregation, is part of a body of churches which subscribe to a form of church government which vests authority in certain church officers and prohibits the resolution of disputes by voting.

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C. STATEMENT OF THE CASE

The petitioners rely on the statement of the case contained in their Petition. The petitioners disagree with the following statements of "fact" contained in the respondent's statement of the case:

At pages 1-2 of respondent's brief, several statements are made regarding the form of government followed by the Churches of Christ, i.e., that they are governed by majority rule of the congregation and that the body of elders do not constitute a rule making body. The respondent cites no record references for those statements. There is nothing in the record of this action to support the respondent's statements. The only evidence on the issue of the form of government followed by Churches of Christ is that contained in the appendix to the Petition

at App.40-54 which is to the effect that the elders are the highest authority of each congregation and that rule by majority vote is strictly prohibited. The unsupported statements of the respondent should not be considered by the Court.

D. **ARGUMENT**

In opposition to the Petition, the respondent first argues that the principles of res judicata bar review by this Court. The respondent argues that this Court's order denying jurisdiction in Williams v. Wyche, 104 S.Ct. 2145 (1984) is dispositive of the instant case. This Court's decision in the prior styled "appeal" is not dispositive because the federal issue raised in that "appeal" had not been raised in the lower court. Consequently, this Court had no jurisdiction to consider the issue even if it had so desired.

After this Court's denial of jurisdiction in Williams v. Wyche, 104 S.Ct. 2145 (1984), the federal question in the instant Petition was timely raised in the Third District Court. At a second hearing, where evidence in the form of the affidavits (App.40-54) was put before the trial court for the first time, the issue which gave rise to the federal question, i.e., whether the trial court had authority to order the Church to hold an election, was reconsidered by the trial court. (App.(1-5).

The petitioners were then entitled to raise the federal question in the Third District Court in the second appeal. At that point the federal question was timely raised and considered by the Third District Court. This Court, therefore, may properly exercise its jurisdiction to consider the question..

It is submitted that this Court's refusal to entertain a question which was not properly before it can not operate as a res judicata determination on the merits of that question. The question is only now, properly before this Court.

Secondly, the respondent argues that the first and fourteenth amendments do not afford protection to the petitioners because Churches of Christ are not hierarchical in their form of government. Admittedly, the Church does not have the traditional hierarchical structure of those churchs which have been the subject of this Court's pronouncements on the circumscribed role of state courts in church property disputes. Nevertheless, the fact that each congregation is autonomous does not mean

that they are governed by majority rule or that they should be forced by a state court to engage in a practice which is strictly prohibited by their form of government.

It is precisely because of the unique facts of this case, that this Court should exercise its jurisdiction and grant the petition.

E. CONCLUSION

For the reasons above, the Petition for Certiorari should be granted.

Respectfully submitted,

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Coral Gables,
Florida, 33134
(305) 444-5925

BY:
LISA BENNETT
Counsel for Petitioners

F. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true and correct copies of the foregoing Reply Brief have been served upon MARK A. VALENTINE, ESQUIRE, 3050 Biscayne Boulevard, Suite 800, Miami, Fl 33137, by depositing in a United States Post Office, Coral Gables, Florida, Branch, with first class postage prepaid, this 28th day of December, 1985.

LISA BENNETT
Counsel for Petitioners